

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SPEARMAN CORPORATION  
MARYSVILLE DIVISION and  
SPEARMAN CORPORATION KENT  
DIVISION,

Plaintiffs,

v.

THE BOEING COMPANY,

Defendant.

Case No. C20-13RSM

ORDER RE: MOTIONS IN LIMINE

**I. INTRODUCTION**

This matter comes before the Court on Plaintiffs/Counterclaim Defendants (collectively referred to as “Spearman”)’s Motions in Limine, Dkt. #205, and Defendant/Counterclaim Plaintiff (“Boeing”)’s Motions in Limine, Dkt. #208. The Court has determined it can rule on these Motions without oral argument. For the reasons below, these Motions are GRANTED, DENIED, and DEFERRED as stated below.

**II. AGREED MOTIONS IN LIMINE**

The Court previously granted thirteen stipulated motions in limine. Dkt. #211.

**III. PLAINTIFFS’ MOTIONS IN LIMINE**

1. Spearman first moves to preclude Boeing from “introducing evidence to refute

Spearman’s argument that James Frankland was fired because of his relationship with

1 Spearman due to its refusal to produce Frankland's personnel file and relevant records."  
2 Spearman is essentially attempting to bring a discovery motion after the deadline.  
3 Spearman never moved the Court to compel production of Frankland's personnel file.  
4 The Court finds it procedurally improper to bar Boeing from presenting evidence as a  
5 result of a discovery issue under these circumstances. More substantively, Boeing  
6 contends that Frankland cannot provide relevant testimony, but "in the event that  
7 Frankland is permitted to testify that he was terminated because of his relationship with  
8 Spearman, Boeing should be permitted to cross-examine Frankland regarding that  
9 termination." The Court agrees with Boeing that such could be relevant, depending on  
10 Frankland's testimony. DENIED.  
11  
12

- 13 2. Spearman next moves to preclude Boeing "from arguing that it terminated any suppliers  
14 whose termination letter it refused to produce in discovery." Again, Spearman did not  
15 move to compel this discovery and the Court will not bar Boeing from presenting this  
16 evidence as a discovery sanction. Boeing states that evidence about other suppliers is  
17 irrelevant in this case, but that "if Spearman are allowed to argue that they were singled  
18 out compared to other suppliers, Boeing can present evidence that (1) Spearman's  
19 performance was much worse than most other Boeing suppliers, and (2) depending on  
20 the totality of the circumstances, Boeing has taken action against other poor-performing  
21 suppliers where warranted." Dkt. #218 at 4–5. The Court agrees with Boeing that such  
22 could be relevant, depending on Spearman's case. DENIED.  
23  
24

- 25 3. Spearman's third Motion seeks to prohibit Boeing from presenting evidence or  
26 argument that any Spearman late delivery was "material" justification for termination of  
27 Spearman's contracts absent proof that the late delivery defeated the contracts' purpose.  
28

Boeing argues, and the Court agrees, that this is improperly seeking to relitigate a summary judgment issue. The Court has already ruled that Boeing did not breach the contract by terminating for Spearman's late deliveries. This is obviously relevant for the remaining claims. DENIED. Any discussion of law for the jury to consider will occur later when the Court and the parties review jury instructions.

4. Spearman seeks to exclude under FRE 401 and 403 any argument that it materially breached a contractual duty to pay IRS debts as they became due. "Inability to pay debts, or nonpayment of debts, as they become due" is an event of default. Why Boeing terminated the contract is key to understanding this case. This may not be the *most* relevant point for Boeing to raise, but its relevance outweighs any prejudice. Spearman fails to adequately explain how IRS debts, not entirely uncommon in the business world, are overly prejudicial. To the contrary, Spearman appears to have a mitigating explanation for the debt that it can present to the jury. DENIED.
5. Spearman moves for a blanket ruling that out-of-court statements of Boeing employees are admissible as party admissions under FRE 801(d)(2). That rule provides in relevant part that a statement is not hearsay if it is offered against an opposing party and "was made by the party in an individual or representative capacity," "was made by a person whom the party authorized to make a statement on the subject," or "was made by the party's agent or employee on a matter within the scope of that relationship and while it existed." Neither party discusses specific statements. This requires an individualized analysis and the Court declines to make a blanket ruling. Boeing employee statements concerning business with Spearman will likely be admissible. Boeing is free to object on a case-by-case basis and the Court will rule at trial. DEFERRED.

1 6. Spearman moves for a preemptive ruling that Boeing employees' instant messages  
2 produced in this case, although hearsay, are admissible under the business records  
3 and/or party admission exceptions. *See* FRE 803(6). Neither party discusses specific  
4 records. The Court has already declined to issue a blanket ruling as to party admissions.  
5 The Court will likewise defer ruling on the business record issue until it is faced with  
6 individual IM conversations. The Court is likely to find that instant messages  
7 discussing Spearman are admissible business records. DEFERRED.

9 7. Spearman moves under FRE 403 to exclude evidence of its finances, alleged financial  
10 condition, or any related financial documents that Boeing did not know about at the  
11 time the contracts were made, arguing that Boeing did not really care about its finances,  
12 just Spearman's low prices. Spearman muddles its point by arguing that Boeing already  
13 had "negative financial indicators." It does not necessarily follow that if the indicators  
14 were even more negative Boeing would still have chosen Spearman; presumably there  
15 is some tipping point. The Court finds that this type of information is relevant to  
16 Boeing's fraud and negligent misrepresentation counterclaims and more probative than  
17 prejudicial. Spearman is free to make substantive arguments about the value of this  
18 information to the jury. DENIED.

21 8. Spearman moves to exclude evidence of Alex Spearman's personal finances under FRE  
22 401 and 403. Boeing argues this is relevant to its alter ego theory and its fraud and  
23 negligent misrepresentation claims, and that Mr. Spearman's personal financials will  
24 show that he commingled his personal and corporate assets and liabilities, which is  
25 relevant to Boeing's fraud and alter ego claims. The Court agrees with Boeing that,  
26 although this information might not be relevant for defending against Spearman's  
27  
28

1 claims, or for supporting Boeing's counterclaims directly, it is relevant if Boeing is to  
2 go after Alex Spearman's personal assets under an alter ego theory of liability.  
3 Accordingly, it cannot be excluded under FRE 401 or 403. DENIED. The Court may  
4 entertain a narrower FRE 403 motion brought during trial if evidence is introduced  
5 solely for embarrassment rather than to demonstrate co-mingling or other necessary  
6 elements of the alter ego theory.  
7

- 8 9. Spearman moves to prohibit Boeing from presenting evidence or argument that its  
9 claims for lost profits are not allowable under its contract with Boeing. The Court has  
10 already ruled on this issue, twice. *See* Dkt. #190 at 14–15; Dkt. #194 at 3. This issue is  
11 not evidentiary in nature, and is not a proper motion in limine. Neither the Court nor  
12 the jury will be baited into reconsidering prior legal rulings. DENIED.  
13

#### 14 **IV. DEFENDANT'S MOTIONS IN LIMINE**

- 15 1. Boeing first moves to exclude "evidence relating to issues resolved or rendered  
16 irrelevant by the Court's summary judgment order." Spearman's breach of contract  
17 claim has been dismissed, and, as stated above, their available damages limited. *See*  
18 Dkt. #190. The Court will not repeat its prior rulings here. The Court will sustain an  
19 objection to any evidence solely relevant to dismissed claims or unavailable damages.  
20 Spearman is free to explain how evidence relates to remaining claims or available  
21 damages. If Spearman's expert Robert Wagner can only opine about lost profits on  
22 work never performed, he should not be called as a witness. Spearman may need to  
23 explain at trial how damages for the Makino 5-Axis Machine or GROBs are available,  
24 relying on testimony and exhibits for factual support. The Court does not believe that a  
25 discussion of such evidence would confuse the jury, and if such is ultimately not  
26  
27  
28

1 available that can be explained at closing and via the verdict form. Evidence of  
2 Boeing's bad faith that is not tied to Boeing's contractually-required performance with  
3 Spearman or other suppliers is almost certainly irrelevant and will be excluded under  
4 FRE 401 or 403. GRANTED.

5  
6 2. Boeing moves to preclude Spearman's witness from offering legal conclusions along the  
7 lines that Boeing's actions were a breach of contract, illegal, or in bad faith, under FRE  
8 704 and *United States v. Diaz*, 876 F.3d 1194, 1197 (9th Cir. 2017). Spearman is free to  
9 present evidence or testimony to support their breach of good faith and fair dealing  
10 claim. Witnesses, including expert witnesses, may not offer legal conclusions. Labeling  
11 an action "in bad faith" is not the same thing as opining that Boeing breached the duty of  
12 good faith and fair dealing. The Court expects that the parties understand this  
13 distinction and that it can issue rulings on a case-by-case basis. DEFERRED.

14  
15 3. Boeing's third motion seeks to exclude evidence regarding Boeing's contractual  
16 relationships with other suppliers as irrelevant under FRE 401. Spearman argues that  
17 Boeing's disparate treatment of Spearman as compared with its other suppliers goes to  
18 the heart of Spearman's bad faith claim because "[w]hether a party acted in good faith  
19 under Washington law requires the fact finder to determine whether that party performed  
20 'consistently with the justified expectations of the other parties' or performed in a way  
21 that 'violate[d] community standards of decency, fairness, or reasonableness.'" Boeing  
22 has failed to convince the Court that this type of evidence is flatly irrelevant under case  
23 law. To the contrary, a discussion of what is in good faith and fair with this type of  
24 contract almost certainly requires analysis of Boeing's relationships with other suppliers,  
25 given the uniqueness of Boeing's business model. DENIED.  
26  
27  
28

- 1 4. Boeing moves to exclude out-of-court statements of Spearman’s accountants, brokers,  
2 banks, and other third parties as hearsay. Spearman argues that statements from  
3 accountants and the like were relied on by Alex Spearman and therefore FRE 803(1)  
4 applies. The Court finds that the “present sense impression” exception does not apply to  
5 accounting advice on these limited facts or any reasonable circumstances the Court can  
6 imagine. Spearman has also failed to demonstrate that what we are talking about here  
7 are business records, as opposed to Spearman’s proposed testimony at trial about what  
8 advisers told him. The business record exception does not apply. GRANTED.
- 10 5. Boeing argues that evidence relating to the financial, emotional, or personal impact this  
11 litigation had on either side is irrelevant, and any probative value would be substantially  
12 outweighed by the danger of unfair prejudice. The Court agrees. GRANTED.  
13 Spearman is free to talk about the procedural history of this case without wading into the  
14 financial, emotional, or personal impact of such on Alex Spearman.
- 16 6. Boeing moves to exclude news reports, social media posts, and other alleged bad acts as  
17 “inadmissible character evidence and hearsay.” Boeing does not provide specifics, other  
18 than to mention the 737 MAX airplane. The Court will not rule on this issue in a  
19 vacuum. Bad acts that are not relevant to this litigation will be excluded at trial under  
20 FRE 401 and 403 as stated above. DEFERRED.

## 22 V. CONCLUSION

23  
24 Having reviewed the relevant briefing and the remainder of the record, the Court hereby  
25 finds and ORDERS that Spearman’s Motions in Limine, Dkt. #205, and Boeing’s Motions in  
26 Limine, Dkt. #208, are GRANTED, DENIED, AND DEFERRED as stated above.  
27  
28

1  
2 DATED this 3<sup>rd</sup> day of March, 2023.  
3  
4

5 

6 RICARDO S. MARTINEZ  
7 UNITED STATES DISTRICT JUDGE  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28